IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 369 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JENABEN HASAMBHAI

Versus

RADHESHYAM LAXMANJI GUPTA

Appearance:

MR MC BHATT for Petitioners

Mr R R Vashy, for respondent no.1

NOTICE SERVED for Respondent No. 3, 4

MR SV RAJU for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/01/2001

ORAL JUDGEMENT

This is an appeal filed by the original claimants against the judgment and award dated 25.4.1984 recorded

by the learned Motor Accident Claim Tribunal No.4 (Main), Ahmedabad in Motor Accident Claims Petition No.233/82, under which the learned Tribunal dismissed the said summary claim petition of the present appellants mainly on the ground that the appellants did not prove anything on record.

2. The appellants above named, preferred the aforesaid MAC Petition before the aforesaid tribunal for getting compensation of Rs.24,999/- against the respondents above named. The appellants contended there in the said petition that on 23.3.1982, at about 1.30 p.m., the accident took place, involving a rickshaw which dashed against deceased Hasambhai Keshavbhai. That on account of the said accident, Hasambhai sustained injuries. The appellants contended before the tribunal that the accident took place on account of rash and negligent driving on the part of the driver of the said vehicle, who was driving the vehicle in the employment of the owner of the vehicle. That therefore, the driver as well as the owner of the vehicle were responsible and liable to compensate the aforesaid claimant. It is further contended that the deceased died about two months after the accident took place. Therefore, the claim was to the tune of Rs.24,994/-. The petition was registered and notices were issued to the opponents. First opponent being owner of the vehicle has filed written statement at exh.9 before the tribunal. There it has been denied that the deceased died on account of the injuries sustained in the aforesaid accident. Ownership of the vehicle was not seriously disputed. It was contended that the above vehicle was insured with the New India Assurance Company and the said Insurance Company should have been showed as opponent by the petitioner. Rest of the averments of the petition have been denied by this opponent in the said written statement. Thereafter, an application was made at Exh.10 for joining the said Insurance Company. The said Insurance Company has filed written statement at Exh.22 denying all facts and circumstances. It has also been denied that the aforesaid vehicle bearing No.GRS 2114 was insured with this Insurance Company. The Insurance Company has requested that the petition be dismissed against the Insurance Company. In the meantime, opponent no.2 filed written statement at Exh.14. There, the bank has denied its liability to answer the claim of the petitioner. Thereafter, the matter was posted for evidence. Affidavits have been filed and thereafter, learned tribunal found that the petitioner had totally failed in proving the case against the opponents and, therefore, the tribunal dismissed the said petition of the appellants. Feeling aggrieved by

the said judgment and award of the tribunal, the original petitioners have preferred this appeal before this Court. It has been mainly contended here that the learned tribunal has committed serious error in disposing of the summary petition of the appellants and, therefore, the judgment and order of the tribunal are illegal and erroneous and deserve to be set aside. It is, therefore, prayed that the present appeal be allowed and award be passed in favour of the appellants and against the respondents. On submission of the memo of the appeal, it seems that the appeal was admitted. In pursuance of the service of notice, appearance has been made on behalf of the Bank of India-respondent No.2. However, rest of the opponents have not made appearance when the matter was argued by the learned Advocate for the appellants. Therefore, I have heard the learned Advocate for the appellants and the learned Advocate for respondent no.2, i.e. Bank of India. I have also perused the papers. Learned Advocate for the appellants has also taken me through the record of the tribunal.

3. Insofar as respondent no.2 is concerned, it is a bank and the allegation is that the vehicle in question was hypothecated with this bank. Any way, the bank was not the owner of the vehicle at any point of time and the registration or the insurance did not stand in the name of the bank. There is no evidence about the same. Consequently, the bank would not be responsible and liable to answer the claim of the appellants, and, therefore, the appeal deserves to be dismissed against respondent No.2, bank. So far as respondent no.3 is concerned, Firoz Hasambhai is shown to be the driver of the vehicle. At the stage of hearing, learned Advocate for the appellants has shown me a certified copy from the criminal case No.1841/82, which shows that the fact of accident was admitted by the driver of the vehicle before the learned Metropolitan Magistrate Court No.9 at Ahmedabad on 21.1.1983. There the name of the driver is shown to be Mohammad Vora. This shows that there this respondent was not shown as driver of the said vehicle. There is no other material to show that respondent no.3 was driver of the said vehicle at relevant point of time. Learned Advocate for the appellant has also conceded this position. Therefore, the appeal has to be dismissed so far as respondent no.3 is concerned since he is not prima facie shown to be driver of the vehicle involved in the accident. So far as respondent no.4 is concerned, it is shown to be the Insurance Company. The tribunal has found that no material was shown or placed on record to show that the vehicle involved in the accident in question was insured with respondent no.4 at relevant

point of time. Even till today, no such material has been placed on record. Learned Advocate for the appellants has not been able to show that the aforesaid rickshaw was insured with respondent no.4 at any point of time. In that view of the matter, respondent no.4 would also not be responsible to answer the claim of the appellants and consequently, the appeal has to fail even against respondent no.4. Then the question is about respondent no.1, who is shown to be owner of the vehicle. On this aspect of the case, the appellants have filed affidavit before the tribunal showing that the deceased sustained injuries in the aforesaid accident in which the rickshaw was involved and that rickshaw belonged to the first respondent.

4. The first respondent has not disputed the fact that he was the owner of the vehicle involved in the accident at relevant point of time. When the rickshaw had dashed against the deceased and when it resulted in some injuries to the person of the deceased, then in that event, it has to be held that the driver of the said vehicle involved in the said accident was negligent in driving the said vehicle at the relevant point of time. This is after all a summary inquiry which would not require evidence in details. Therefore, on the strength of the said affidavit and other materials on record, including the FIR and injury certificate, there is no reason to discard the said materials on record. Therefore, it is proved on record that the deceased sustained injuries in the motor vehicle accident at the relevant point of time and that the accident took place due to negligence on the part of the driver of the vehicle. This fact was proved by the appellants on the strength of evidence on record. The learned tribunal has clearly erred in holding that nothing has been proved by the appellant and therefore, that finding is required to be reversed. I, therefore, find that the deceased sustained injuries on account of negligent driving on the part of the driver at the relevant point of time. Once it is shown that the said injured sustained injuries on account of negligent driving on the part of the driver, the owner is vicariously responsible to answer the claim of the appellants. It is true that respondent no.3 is not proved to be driver of the vehicle but it is well settled that the driver is not a necessary party and the claimant can proceed against the owner in absence of the driver being joined as a party. Therefore, the claimant can certainly proceed against the owner of the vehicle even when the driver has not been made a party to the litigation. Once the fact is proved that the accident had taken place resulting in injuries to the deceased,

and when it is further established that the driver of the vehicle was negligent, then it was a tortuous act on the part of the driver of the vehicle, on account of which the deceased sustained injuries. Therefore, the deceased would be entitled to compensation on account of the tortuous act of the driver of the vehicle. Since the deceased died before the institution of the petition, the legal representatives of the deceased would be entitled to file the petition for compensation. As regards the quantum of compensation, learned Advocate for the appellants has contended that the petitioner is entitled to compensation of Rs.11,000/- as follows:

i. Rs. 3,000/- pain, shock and suffering
ii. Rs. 5,000/- Medical expenses
iii. Rs. 1,000/- Actual loss of income
iv. Rs. 2,000/- special diet, conveyance etc.

Rs. 11,000/-

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So far as pain, shock and suffering is concerned, the injured himself has not filed any petition and, therefore, the petitioners being the legal representatives of deceased injured are not entitled to any compensation under the head of pain, shock and suffering. So far as medicinal expenses are concerned, there is no evidence on record to show as to what amount has been spent for medicine and treatment. However, a follow-up card is produced on record, which does not go to prove the medicinal expenses. The accident took place in 1985 and it is a matter of record that the deceased died within two months of the date of accident. At the same time, there is no evidence to show that deceased died on account of the injuries sustained by him in the said accident. In absence of any material on record, it would be just and proper to consider Rs.2,000/- to be reasonable under the head of medical expenses. So far as loss of income is concerned, there is no material to show the income of deceased. There is further no evidence to show the period for which he remained under treatment and he could not attend normal functions. Rs.1,000/- has been claimed as loss of income and it would be appropriate to reduce it to Rs.500/-. Therefore, I find that the appellant would be entitled to Rs.500/- as loss of income. Here it is required to be considered that had the deceased not suffered the said injuries, the appellants would have been entitled to receive the said income from the deceased. So far as special diet and other expenses are concerned, there is again no evidence on record and, therefore, the appellants can be awarded

an amount of Rs.500/- towards special diet and other expenses. In that view of the matter, the appellants would be entitled to total amount of compensation as follows:

1.	Rs. 2,000/-	medical expenses
2.	Rs. 500/-	Loss of income
3.	Rs. 500/-	Special diet etc.
	Rs. 3,000/-	Total

I am of the view that the aforesaid aspects have not been properly considered by the tribunal. The appellants are entitled to compensation as aforesaid from respondent no.1. In the above view of the matter, the appeal is required to be allowed since the tribunal has ignored the aforesaid aspects of the case though there was affidavit and other materials on record.

5. In that view of the matter, this appeal is partly allowed. Respondent No.1 shall pay to the appellants an amount of Rs. 3,000/- (Three thousand only) with costs and with interest at the rate of 12% per annum from the date of the petition till the date of payment. Respondent no.1 shall deposit the aforesaid amount before the tribunal concerned and on the said deposit, the tribunal shall pass appropriate further order. The appeal fails and is ordered to be dismissed against the remaining respondents.

23.1.2001 [D P Buch, J.]
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